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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,921	03/19/2004	Ross Thomas Kaufman	20357A (27839-118)	8211
45736 7590 08/18/2009 Christopher M. Goff (27839) ARMSTRONG TEASDALE LLP ONE METROPOLITAN SQUARE SUITE 2600 ST. LOUIS, MO 63102				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
NOTIFICATION DATE		DELIVERY MODE		
08/18/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USpatents@armstrongteasdale.com

Office Action Summary

Application No.

10/804,921

Applicant(s)

KAUFMAN ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2009.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-57 is/are pending in the application.
4a) Of the above claim(s) 30-32 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-15, 17-29, 33-57 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/S6108)
Paper No(s)/Mail Date 3/11/09
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☒ Other: NPL reference

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-15, 17-29, 33-57 have been considered but are moot in view of the new ground(s) of rejection prompted by applicant's amendment to the claims. However examiner will address the essence of applicant's arguments herein.
2. Applicant argues, beginning at the bottom of page 16, that Hale fails to disclose a copolyester having amounts of aromatic dicarboxylic acid, aliphatic dicarboxylic acid and dihydric alcohol within the respective claim ranges, a copolyester with a weight average molecular weight, a number average molecular weight, and a glass transition temperature all within the respective claim ranges and filler particles coated with fatty acid in an amount within the respective claim range. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Wu, explicitly or by reference to Brink, discloses a film that meets all of the limitations of claim 1 as composition, e.g. amount of aliphatic dicarboxylic acid, dihydric alcohol, and therefore inherently possesses the weight average and number average molecular weights, as well as the glass transition temperature, which is solely dictated by composition. Thus Wu already addresses those limitations. Hale was introduced to remedy the deficiencies of Wu regarding the coated filler particle and a polyfunctional branching agent. The combination of Wu and Hale thus meets all of the limitations of claim 1.
3. As to the argument that Brink does not explicitly disclose weight average and number average molecular weights, again, since Brink discloses a composition for the film first disclosed

by Wu that is identical to the aliphatic acid, aromatic acid and dihydric alcohol disclosed by applicant, the weight average and number average molecular weights are suggested by Wu by reference to Brink even if Brink does not explicitly state the weight average and number average molecular weights. It is for similar reasons that Wu by reference to Brink also renders the recited glass transition temperature range unpatentable. While it may be true that glass transition temperature does not necessarily correlate to a particular mole breakdown, applicant is reminded that applicant has recited ranges, not absolute values, for the weight percents, glass transition temperature and the two average molecular weights. Since those ranges regarding weight percent are met, the limitation of glass transition will also be met. As to the argument that Hale does not disclose any amount of fatty acid, applicant is referred to the Hale reference in Col. 10, lines 21-27, which allude to a weight percent amount of fatty acid (i.e. at most 2.4 weight %), and discloses a specific coated particle, i.e. SUPERCOAT®. Examiner has attached a data sheet for SUPERCOAT in which it is stated that 0.5 wt % is contributed by "acid insolubles", which examiner interprets as including fatty acids.

4. As to the argument that the recited ranges for weight average and number average molecular weights are unexpected results due to the unpredictable nature of chemical reactions and processes, weight average and number average molecular weights are dictated by the number of atoms of a particular element and the molecular weight of each type of atom. Those two parameters are clearly predictable in any chemical process, and thus examiner disagrees that the recited value ranges for the two types of molecular weights are not inherent and constitute unexpected results obtained by applicant.

5. As to the argument that there is no motivation to modify Wu so as to comprise a polyfunctional branching agent disclosed by Hale, the polyfunctional agent are necessary in the formation of the copolyester. The combination of Wu and Hale is clearly not an arbitrary

combination on the part of the examiner; both disclose a aliphatic-aromatic copolyester also containing dihydric alcohol and calcium carbonate filler particles. Thus, there is clear motivation to use the polyfunctional branching agent of Hale as it results in the formation of a laminated film substantially identical in composition to the Wu film, the minor differences being, e.g. the branching agent used. If there is a reasonable expectation of success in trying an alternate set of components to arrive at a virtually identical end product, that is in and of itself sufficient motivation to modify, as it would be obvious to try known equivalents. It has been held that if a person of ordinary skill in the art can implement a predictable variation (in this case a different branching agent), 35 U.S.C. 103 likely bars its patentability. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007)

6. As to the arguments that appear to rely again on an "unexpected results" rationale regarding break stress and arguments relying on specific examples disclosed by applicant, the examples are not commensurate in scope with the claims, they are more narrow. The claims all recite claim ranges, not absolute values, for all properties recited. Thus if a composition for a film such as the one disclosed by Wu by reference to Brink meets the claim range limitations for amounts of its components, the composition will necessarily meet the claim range limitations for the recited properties because those properties are inherent to the composition or range of compositions. As stated previously, it is applicant's burden to show otherwise, which applicant has not done convincingly.

Information Disclosure Statement

7. The information disclosure statement (IDS) submitted on March 11, 2009 was filed after the mailing date of the non-final action on January 27, 2009. The submission is in compliance

with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1-15, 17-29 and 33-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu et al (WO 02/23465 A1) in view of Hale et al (U.S. Patent Application Publication No. 2003/0039851).

With respect to **claim 1**: Wu teaches a laminate film for use as a laminated outer cover in an absorbent article. Wu teaches by reference to WO 98/23673, to Brink, that the laminated film comprising a biodegradable stretched aliphatic-aromatic copolyester film, the film comprising filler particles and a copolyester comprising from about 2.5-30 mol % (converted from mol%

based upon 200% total) of aromatic dicarboxylic acid or ester thereof, which overlaps the range of 10 mole% to about 30 mole%; from about 15-42.5 mol% (converted from mol% based upon 200% total) of aliphatic dicarboxylic acid or ester thereof, which overlaps the range of 20 mole% to about 40 mole%, and 50% dihydric alcohol, which falls within the range of from about 30 mole% to about 60 mole% ('673, Page 11, lines 19-25, Page 16, lines 10-12).

Wu does not explicitly teach a weight average molecular weight, a number average molecular weight or a glass transition temperature of the instant copolyester. However, Wu teaches by reference to Brink a laminated copolyester film having a composition substantially identical to that claimed. It would be obvious to one of ordinary skill in the art to modify the article of Wu so as to have a weight average molecular weight, number average molecular weight and glass transition temperature that each fall within the respective claim range with a reasonable expectation of success to provide an article having desired breathability and biodegradability characteristics. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that render obvious the claimed invention but has a basis for shifting the burden of proof to the applicant.

Wu does not explicitly teach an absorbent article having a laminated outer cover, however since Wu teaches that the laminate of the instant invention can be used as a laminated outer cover in an absorbent article (Page 7, lines 1-5), it would be obvious to one of ordinary skill in the art to include this laminate in an absorbent article as a laminated outer cover with a reasonable expectation of success.

Wu, either alone or by reference to Brink, does not explicitly teach that the film additionally comprises a polyfunctional branching agent. Hale teaches a laminate film with a composition that is substantially identical to that taught by Wu by reference to Brink, and teaches that said film is formed using a polyfunctional branching agent inasmuch as its functionality is three to six. ('851, ¶0054) Since both films have a substantially identical composition and seek to solve a similar problem in the art (providing a film with greater breathability), it would be obvious to one of ordinary skill in the art to modify the film taught by Wu so as to include a polyfunctional branching agent as taught by Hale to impart increased breathability to the article.

Wu does not disclose that the filler particles are coated in an amount of up to 2 wt % fatty acid, wherein the weight is presumed herein to be based upon the weight of the filler particle, based upon applicant's disclosure. Hale discloses filler particles that are SUPERCOAT® surface treated calcium carbonate particles treated with a coating of fatty acid. Examiner has attached a data sheet for the SUPERCOAT® particles which shows acid insolubles (i.e. the fatty acid) as present in a maximum amount of 0.5 wt % inasmuch as it is not clear whether the only acid insoluble is a fatty acid. ('115, Col. 10, lines 20-27) Hale discloses that this is a preferred filler particle and since the prior art of Hale seeks to solve a similar problem in the art to that with which applicant is concerned, and a fatty acid coating increases the organophilicity of the calcium carbonate filler particle, making it easier to bend with the polyesters to form the film, it would be obvious to one of ordinary skill in the art to modify the article of Wu by replacing the filler particles with those disclosed by Hale with a reasonable expectation of success to ensure more uniform mixing of the filler with the polyesters to form the film product.

With respect to **claim 2**: The filler particles taught by Wu are present in the film in an amount of between 25-60% by weight of the polymer mixture (copolyester + filler particles), which overlaps the range of from about 30% (by weight of film and filler particles) to about 80% (by weight of film and filler particles). (Page 7, lines 19-22, Page 8, lines 9-13)

With respect to **claim 3**: The filler particles taught by Wu are present in the film in an amount of between 25-60% by weight of the polymer mixture (copolyester + filler particles), which includes the range of from about 50% (by weight of film and filler particles) to about 55% (by weight of film and filler particles). (Page 7, lines 19-22, Page 8, lines 9-13)

With respect to **claims 4,5**: The filler particles taught by Wu are calcium carbonate. (Page 8, line 13)

With respect to **claim 6**: The filler particles taught by Wu are calcium carbonate, which is by its nature nonporous. (Page 8, line 13)

With respect to **claim 7**: The copolyester taught by Wu by reference to Brink comprises from about 2.5-30 mol % (converted from mol% based upon 200% total) which overlaps the range of 15 mole% to about 25 mole% of aromatic dicarboxylic acid or ester thereof, from about 25 mole% to about 35 percent of aliphatic dicarboxylic acid or ester thereof, and from about 45 mole% to about 55 mole% dihydric alcohol and wherein the weight average molecular weight of the copolyester is from about 100,000 to about 130,000 Daltons, and wherein the number average molecular weight of the copolyester is from about 40,000 to about 60,000 Daltons.
(¶0026)

With respect to **claim 8**: The copolyester taught by Wu is identical to a copolyester taught by applicant in the claimed invention and thus comprises from about 17.5 mole% to about 22.5 mole% of aromatic dicarboxylic acid or ester thereof, from about from about 15-42.5 mol% (converted from mol% based upon 200% total), which overlaps the range of 27.5 mole% to about 32.5 mole% percent of aliphatic dicarboxylic acid or ester thereof, and 50% dihydric alcohol, which falls within the range of from about 47.5 mole% to about 52.5 mole% dihydric alcohol. ('673, Page 11, lines 19-25, Page 16, lines 10-12) The weight average molecular weight of the copolyester taught by Wu by reference to Brink is inherently from about 105,000 to about 120,000 Daltons, and the number average molecular weight of said copolyester taught by Wu is inherently from about 42,000 to about 50,000 Daltons. The support for this inherency argument has been stated *supra* with respect to claim 1.

With respect to **claim 9**: The aromatic dicarboxylic acid or ester thereof taught by Wu is an unsubstituted aromatic dicarboxylic acid. (Page 9, lines 8,9)

With respect to **claim 10**: The aromatic dicarboxylic acid or ester thereof is terephthalic acid. (Page 9, lines 8,9)

With respect to **claims 11,12**: The aliphatic dicarboxylic acid or ester thereof is taught by Wu by reference to Brink to be succinic acid ('673, Page 16, lines 10-12).

With respect to **claim 13**: The dihydric alcohol is a straight chain diol. (Page 9, lines 11,12)

With respect to **claims 14,15**: The dihydric alcohol is 1,4-butanediol. (Page 9, lines 11,12)

With respect to **claim 17**: The polyfunctional branching agent of the combined teaching of Wu and Hale is a material with three or more carboxylic acid functions. ('851, ¶10057) The motivation to combine the devices of Wu and Hale is stated *supra* with respect to claim 16.

With respect to **claim 18**: The polyfunctional branching agent of the combined teaching of Wu and Hale is trimellitic acid. ('851, ¶10057) The motivation to combine the devices of Wu and Hale is stated *supra* with respect to claim 16.

With respect to **claim 19**: The aromatic dicarboxylic acid is terephthalic acid, the aliphatic dicarboxylic acid is adipic acid, and the dihydric alcohol is 1,4 butanediol (Page 9, lines 6-12)

With respect to **claim 20**: The filler material is calcium carbonate. (Page 8, lines 12,13)

With respect to **claim 21**: The film has a thickness of between 0.25-10 mils, or 6.35-254 micrometers, which overlaps the range of less than about 250 micrometers. (Page 11, lines 19,20)

With respect to **claim 22**: The film has a thickness of between 0.25-10 mils, or 6.35-254 micrometers, which overlaps the range of from about 2.5 micrometers to about 130 micrometers (Page 11, lines 19,20)

With respect to **claim 23**: The laminated film for use as an outercover further comprises a nonwoven material. (Page 7, lines 21,22)

With respect to **claim 24**: Wu does not teach that the nonwoven is a spunbond nonwoven, however spunbond refers only to the process in which the nonwoven is formed rather than its composition or properties. The limitation of claim 24 is therefore a product-by-process limitation that is not patentable over the prior art of Wu. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also *MPEP* § 2113. The burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983)

With respect to **claim 25**: The nonwoven material has a basis weight of 5-75 gsy, which falls within the range of 3-400 gsm. (Page 11, line 23 – Page 12, line 2)

With respect to **claim 26**: The film and the nonwoven material are laminated together, but Wu does not teach a specific lamination mode. Adhesive is a lamination means that is well-known in the art, and seeks to solve a similar problem (i.e. create a laminate) therefore it would be obvious to one of ordinary skill in the art to laminate the biodegradable copolymer film taught by Wu to the nonwoven using adhesive with a reasonable expectation of success. (Page 7, lines 21,22)

With respect to **claim 27**: Thermal bonding is a lamination means that is well-known in the art, and seeks to solve a similar problem (i.e. create a laminate) therefore it would be obvious to one of ordinary skill in the art to laminate the biodegradable copolymer film taught by Wu to said nonwoven using thermal bonding with a reasonable expectation of success. (Page 7, lines 21,22)

With respect to **claim 28**: Ultrasonic bonding is a lamination means that is well-known in the art, and seeks to solve a similar problem (i.e. create a laminate) therefore it would be obvious to one of ordinary skill in the art to laminate the biodegradable copolymer film taught by Wu to said nonwoven using ultrasonic bonding with a reasonable expectation of success. (Page 7, lines 21,22)

With respect to **claim 29**: Wu teaches that the laminate comprises a nonwoven material, but does not explicitly teach that the laminated material further comprises a bonded carded web. However, spunbond refers only to the process in which the nonwoven is formed rather than its composition or properties. The limitation of claim 29 is therefore a product-by-process limitation that is not patentable over the prior art of Wu. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also *MPEP* § 2113. The burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983)

With respect to **claim 33**: The film taught by Wu is of a substantially identical composition to that of the claimed invention, thus the film taught by Wu has substantially identical mechanical properties such as bulk modulus, which is a quantifier of hydrostatic pressure resistance, and thus further inherently has a hydrostatic pressure resistance of at least about 60 millibar. The support for this inherency argument is stated *supra* with respect to claim 1.

With respect to **claim 34**: The film taught by Wu is of a substantially identical composition to that of the claimed invention, thus the film taught by Wu has substantially identical mechanical properties such as bulk modulus, which is a quantifier of hydrostatic pressure resistance, and thus further inherently has a hydrostatic pressure resistance of at least about 80 millibar. The support for this inherency argument is stated *supra* with respect to claim 1.

With respect to **claim 35**: The film taught by Wu is of a substantially identical composition to that of the claimed invention, thus the film taught by Wu has substantially identical mechanical properties such as bulk modulus, which is a quantifier of hydrostatic pressure resistance, and thus further inherently has a hydrostatic pressure resistance of at least about 120 millibar. The support for this inherency argument is stated *supra* with respect to claim 1.

With respect to **claim 36**: The film taught by Wu is of a substantially identical composition to that of the claimed invention, thus the film taught by Wu has substantially identical mechanical properties such as bulk modulus, which is a quantifier of hydrostatic pressure resistance, and thus further inherently has a hydrostatic pressure resistance of at least about 180 millibar. The support for this inherency argument is stated *supra* with respect to claim 1.

With respect to **claim 37**: The film taught by Wu has a water vapor transmission rate of greater than 1,000 g/m²/day, which overlaps the range of at least about 2,000 g/m²/day. (Page 7, lines 13,14)

With respect to **claim 38**: The film taught by Wu has a water vapor transmission rate of greater than 1,000 g/m²/day, which overlaps the range of at least about 5,000 g/m²/day. (Page 7, lines 13,14)

With respect to **claim 39**: The film taught by Wu has a water vapor transmission rate of greater than 1,000 g/m²/day, which overlaps the range of at least about 10,000 g/m²/day. (Page 7, lines 13,14)

With respect to **claim 40**: The film taught by Wu has a water vapor transmission rate of about 3,500 g/m²/day, which overlaps the range of at least about 25,000 g/m²/day. (Page 7, lines 13,14)

With respect to **claim 41**: The film taught by Wu inherently has a modulus of elasticity of from about 50 MPa to about 250 MPa. The support for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a modulus of elasticity, it would be obvious to one of ordinary skill in the art to modify the article of Wu such that the article/film has a modulus within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not permanently deform.

With respect to **claim 42**: The film taught by Wu has a modulus of elasticity of from about 70 MPa to about 150 MPa. The support for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a modulus of elasticity, it would be obvious to one of ordinary skill in the art to modify the article of Wu such that the article/film has a modulus within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not permanently deform.

With respect to **claim 43**: The film taught by Wu has a modulus of elasticity of from about 80 MPa to about 100 MPa. The support for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a modulus of elasticity, it would be obvious to one of ordinary skill in the art to modify the article of Wu such that the article/film has a modulus within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not permanently deform.

With respect to **claim 44**: The film taught by Wu can inherently be stretched in the machine direction and not break until from about 15% strain to about 100% strain is reached. The support for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a strain-to-break, it would be obvious to one of ordinary skill in the art to modify the article of Wu such that the article/film has a strain-to-break within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not unexpectedly tear.

With respect to **claim 45**: The film taught by Wu can inherently be stretched in the machine direction and not break until from about 20% strain to about 60% strain is reached. The support

for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a strain-to-break, it would be obvious to one of ordinary skill in the art to modify the article of Wu such that the article/film has a strain-to-break within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not unexpectedly tear.

With respect to **claim 46**: The film taught by Wu can inherently be stretched in the machine direction and not break until from about 30% strain to about 50% strain is reached. The support for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a strain-to-break, it would be obvious to one of ordinary skill in the art to modify the article of Wu such that the article/film has a strain-to-break within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not unexpectedly tear.

With respect to **claim 47**: The film taught by Wu can inherently be stretched in the cross direction and not break until from about 150% strain to about 500% strain is reached. The support for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a strain-to-break, it would be obvious to one of ordinary skill in the art to modify the article of Wu such that the article/film has a strain-to-break within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not unexpectedly tear.

With respect to **claim 48**: The film taught by Wu can inherently be stretched in the cross direction and not break until from about 175% strain to about 400% strain is reached. The

support for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a strain-to-break, it would be obvious to one of ordinary skill in the art to modify the article of Wu such that the article/film has a strain-to-break within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not unexpectedly tear.

With respect to **claim 49**: The film taught by Wu can be inherently stretched in the cross direction and not break until from about 200% strain to about 300% strain is reached. The support for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a strain-to-break, it would be obvious to one of ordinary skill in the art to modify the article of Wu such that the article/film has a strain-to-break within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not unexpectedly tear.

With respect to **claim 50**: The film taught by Wu inherently has a break stress of from about 10 MPa to about 50 MPa. The support for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a break stress, it would be obvious to one of ordinary skill in the art to modify the article of Wu such that the article/film has a break stress within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not unexpectedly tear.

With respect to **claim 51**: The film taught by Wu inherently has a break stress of from about 15 MPa to about 40 MPa. The support for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a break stress, it would be obvious to one of

ordinary skill in the art to modify the article of Wu such that the article/film has a break stress within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not unexpectedly tear.

With respect to **claim 52**: The film taught by Wu inherently has a break stress of from about 25 MPa to about 35 MPa. The support for this inherency argument is stated *supra* with respect to claim 1. Thus, while Wu does not explicitly disclose a break stress, it would be obvious to one of ordinary skill in the art to modify the article of Wu such that the article/film has a break stress within the claimed range with a reasonable expectation of success to provide a suitably stretchable film that does not unexpectedly tear.

With respect to **claim 53**: Wu teaches that the articles with which the film can be used include diapers.

With respect to **claim 54**: Wu teaches a laminate for use in an absorbent article as a laminated outer cover, the laminated outer cover comprising a biodegradable stretched aliphatic-aromatic copolyester film, the film comprising filler particles and a copolyester by reference to Brink, the film comprising filler particles and a copolyester comprising from about 2.5-30 mol % (converted from mol% based upon 200% total) of terephthalic acid, which overlaps the range of 10 mole% to about 30 mole%; from about 15-42.5 mol% (converted from mol% based upon 200% total) of adipic acid, which overlaps the range of 20 mole% to about 40 mole%, and 50% 1,4-butanediol, which falls within the range of from about 30 mole% to about 60 mole% ('673, Page 11, lines 19-25, Page 16, lines 10-12). Wu does not explicitly teach a weight average molecular weight, a number average molecular weight or a glass transition temperature of the instant copolyester.

However, Wu teaches by reference to Brink a laminated copolyester film having a composition substantially identical to that claimed. It would be obvious to one of ordinary skill in the art to modify the article of Wu so as to have a weight average molecular weight, number average molecular weight and glass transition temperature that each fall within the respective claim range with a reasonable expectation of success to provide an article having desired breathability and biodegradability characteristics. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that render obvious the claimed invention but has a basis for shifting the burden of proof to the applicant.

Wu does not explicitly teach an absorbent article having a laminated outer cover, however since Wu teaches that the laminate of the instant invention can be used as a laminated outer cover in an absorbent article (Page 7, lines 1-5), it would be obvious to one of ordinary skill in the art to include this laminate in an absorbent article as a laminated outer cover with a reasonable expectation of success.

Wu, either alone or by reference to Brink, does not explicitly teach that the film additionally comprises a polyfunctional branching agent. Hale teaches a laminate film with a composition that is substantially identical to that taught by Wu by reference to Brink, and teaches that said film is formed using a polyfunctional branching agent inasmuch as its functionality is three to six. ('851, ¶0054) Since both films have a substantially identical composition and seek to solve a similar problem in the art (providing a film with greater breathability), it would be obvious to one of ordinary skill in the art to modify the film taught by

Wu so as to include a polyfunctional branching agent as taught by Hale to impart increased breathability to the article.

Wu does not disclose that the filler particles are coated in an amount of up to 2 wt % fatty acid, wherein the weight is presumed herein to be based upon the weight of the filler particle, based upon applicant's disclosure. Hale discloses filler particles that are SUPERCOAT® surface treated calcium carbonate particles treated with a coating of fatty acid. Examiner has attached a data sheet for the SUPERCOAT® particles which shows acid insolubles (i.e. the fatty acid) as present in a maximum amount of 0.5 wt % inasmuch as it is not clear whether the only acid insoluble is a fatty acid. ('115, Col. 10, lines 20-27) Hale discloses that this is a preferred filler particle and since the prior art of Hale seeks to solve a similar problem in the art to that with which applicant is concerned, and a fatty acid coating increases the organophilicity of the calcium carbonate filler particle, making it easier to bend with the polyesters to form the film, it would be obvious to one of ordinary skill in the art to modify the article of Wu by replacing the filler particles with those disclosed by Hale with a reasonable expectation of success to ensure more uniform mixing of the filler with the polyesters to form the film product.

With respect to **claim 55**: The filler particles taught by Wu are present in the film in an amount of between 25-60% by weight of the polymer mixture (copolyester + filler particles), which overlaps the range of from about 30% (by weight of film and filler particles) to about 70% (by weight of film and filler particles). (Page 7, lines 19-22, Page 8, lines 9-13)

With respect to **claims 56,57**: The filler particles disclosed by Wu are calcium carbonate. (Page 8, line 13)

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MELANIE J. HAND** whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761